


## Memorandum

**To** : Mr. Ramon J. Hirsig  
Executive Director – MIC: 73

**Date:** July 29, 2004

**From** :   
Stephen R. Rudd, Acting Deputy Director  
Sales and Use Tax Department – MIC: 43

**Subject** : Regulation 1610.2, *Mobilehomes and Commercial Coaches*.  
Chief Counsel's Rulemaking Calendar – August 24, 2004

I am requesting your approval to place proposed amendments to Regulation 1610.2, *Mobilehomes and Commercial Coaches*, on the Chief Counsel's Rulemaking Calendar for Board approval.

Regulation 1610.2 clarifies and makes specific the application of the Sales and Use Tax Law to sales of mobilehomes and commercial coaches.

A non-substantive revision to subdivision (b)(3)(B) of the regulation is recommended to correct a referencing error. Subdivision (b)(3)(B) makes a reference to Regulation 1668(e) "Other Evidence to Rebut Presumption of Taxability." The reference should be to Regulation 1668(h) "Mobilehomes."

Attached is the proposed amendment to the regulation, which reflects the above correction. I have also attached Regulation 1668, *Sales for Resale*, for your reference.

We request your approval to place the matter on the Chief Counsel's Rulemaking Calendar on August 24, 2004, for Board authorization to amend the regulation in accordance with California Code of Regulations, title 1, section 100. Legal Department staff has advised us that this change is without regulatory effect and is not subject to the normal public hearing process.

If you have any questions regarding this request, please let me know or contact Ms. Mariflor Jimenez at (916) 324-2952.

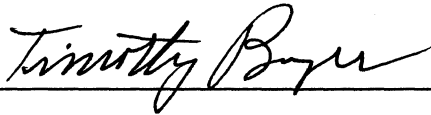
Attachment

Recommendation by:



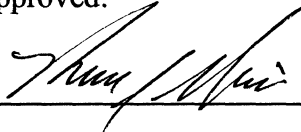
*for* Deputy Director

Approved:



Timothy Boyer, Chief Counsel  
Legal Department

Approved:



Ramon J. Hirsig, Executive Director

BOARD APPROVED

At the \_\_\_\_\_ Board Meeting

Deborah Pellegrini, Chief  
Board Proceedings Division

Attachments

cc (all with attachments):

Mr. Timothy Boyer (MIC 83)  
Ms. Deborah Pellegrini (MIC 81)  
Ms. Janice Thurston (MIC 82)  
Mr. John Waid (MIC 82)  
Mr. Jeffrey L. McGuire (MIC 92)  
Mr. Geoffrey E. Lyle (MIC 50)  
Ms. Laureen Simpson (MIC 50)  
Mr. Peter Horton (MIC 50)  
Ms. Mariflor Jimenez (MIC 50)

## **Proposed Amendment to Regulation 1610.2. MOBILEHOMES AND COMMERCIAL COACHES.**

### **(a) DEFINITIONS.** For purposes of this regulation, the following definitions govern:

(1) "Mobilehome" means a structure transportable in one or more sections, designed and equipped to contain not more than two dwelling units to be used with or without a foundation system. A "dwelling unit" consists of one or more habitable rooms which are designed to be occupied by one family with facilities for living, sleeping, cooking, eating, and sanitation. "Mobilehome" does not include a recreational vehicle, commercial coach, or factory built housing as defined in Section 19971 of the Health and Safety Code.

(2) "Commercial Coach" means a structure transportable in one or more sections, designed and equipped for human occupancy for industrial, professional, or commercial purposes, which is required to be moved under permit, and shall include a trailer coach. "Trailer coach" means a vehicle, other than a motor vehicle, designed for human habitation, or human occupancy for industrial, professional, or commercial purposes, for carrying property on its own structure, and for being drawn by a motor vehicle.

(3) "Used Mobilehome" means a mobilehome that was previously sold and registered or titled with the Department of Housing and Community Development, or with an appropriate agency or authority, or any other state, District of Columbia, territory or possession of the United States or a foreign state, province, or country.

(4) "Current Recognized Value Guide" means (1) the Kelley Blue Book Manufactured Housing and Mobilehome Guide or (2) the National Automobile Dealer Association's (NADA) Mobilehome Manufactured Housing Appraisal Guide, which is the current guide for the period in which the sale, storage, use or other consumption occurs.

### **(B) BASIC APPLICATION OF TAX.**

#### **(1) GENERAL EXEMPTIONS.**

**(A) Sales Tax.** Sales tax does not apply to sales of mobilehomes or commercial coaches required to be annually registered under the Health and Safety Code when the retailer (as defined in Revenue and Taxation Code Section 6275) is not licensed pursuant to the Health and Safety Code as a manufacturer, manufacturer branch, dealer, dealer branch, distributor, distributor branch, representative, or representative branch. Generally, where sales tax does not apply to the sale, unless the transaction is also exempt from the use tax as provided in subdivision (b)(1)(B) below, use tax applies to the purchase of the mobilehome or commercial coach. The purchaser is required to pay the use tax to the Department of Housing and Community Development at the time of making application for registration. (For explanation regarding payment of tax by purchaser, see subdivision (c) below.)

#### **(B) Sales and Use Tax.** Neither sales tax nor use tax applies to the sale or use of:

1. Mobilehomes and commercial coaches sold by the parent, grandparent, child, grandchild, or spouse of the purchaser, or by the brother or sister of the purchaser if both are under the age of 18 and are related by blood or adoption, where the seller is not engaged in the business of selling the type of property for which the exemption is claimed. Claimants of this exemption must submit satisfactory evidence of relationship.

2. Mobilehomes and commercial coaches when included in any transfer of all or substantially all of the property held or used in the course of business activities of the transferor and when after the transfer the real and ultimate ownership remains substantially similar.

3. Used mobilehomes which are subject to property tax pursuant to Part 13 (commencing with Section 5800) of Division 1 of the Revenue and Taxation Code at the time of sale.

(2) **FEES.** The "gross receipts" from the retailer's sale of a mobilehome and the "sales price" of a mobilehome stored, used, or otherwise consumed in this State does not include separately stated escrow fees or registration fees charged in connection with the sale of any mobilehome.

#### **(3) NEW MOBILEHOMES.**

**(A) In General.** Generally, unless the transaction qualifies as a sale for occupancy as a residence, or is otherwise exempt, tax applies to the gross receipts from the sale of a new mobilehome to the same extent as sales of other tangible personal property. See subdivision (b)(3)(B) below for special rules applicable to sales of new mobilehomes for occupancy as residences.

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The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

**(B) Mobilehomes Sold for Occupancy as a Residence.** A mobilehome dealer is the "retailer-consumer" of any new mobilehome sold to the customer for occupancy as a residence if the transaction would otherwise have been subject to the sales tax and the mobilehome is thereafter subject to local property taxation. For a description of the conditions under which a mobilehome dealer may tender a resale certificate to a supplier, see Regulation 1668(e h).

1. Measure of Tax. The retailer-consumer is required to declare and pay tax at 75 percent of the retailer-consumer's purchase price for the period in which the qualifying sale is made to a customer. A qualifying sale is one in which the customer certifies to the retailer-consumer at the time of sale that the mobilehome is being acquired for occupancy as a residence. The retailer-consumer is not authorized to separately bill the customer for tax reimbursement.

The applicable percentage of the purchase price applies to all items which the retailer-consumer has purchased and affixed as an integral part of the mobilehome prior to sale, or pursuant to the contract of sale, such as carpeting, wall paneling, room partitions, and built-in appliances. Operative January 1, 1985, for purposes of this regulation, draperies and freestanding refrigerators and ranges shall be considered an integral part of a mobilehome. If these items are not included in the price of the mobilehome when acquired by the retailer-consumer, they must be included when computing the total amount subject to tax. The retailer-consumer's purchase price of these items also must include any labor charges for affixing the property when the labor is performed by other than the retailer-consumer.

A mobilehome dealer is the retailer of certain other items which are not an integral part of the mobilehome, such as furniture. The mobilehome dealer is also the retailer of mobilehome accessories, such as window awnings, skirting, and air conditioning units, provided these items are not affixed to a mobilehome situated on a permanent foundation or directly affixed to realty. Tax is due on the entire retail selling price to the customer.

2. Certification of Exemption. If a purchaser certifies in writing at the time of the sale that the mobilehome will be used in a manner or for a purpose entitling the retailer to report tax on the transaction based on 75 percent of the retailer's purchase price and subsequently uses the property in some other manner or for some other purpose not qualifying for the exemption, then the purchaser shall be liable for payment of tax measured by the entire sales price or gross receipts from the sale less an amount equal to 75 percent of the sales price or gross receipts from the sale of the mobilehome to the retailer.

The following is a form of certification approved by the Board:

**CERTIFICATION OF EXEMPTION  
MOBILEHOME RESIDENCE PURCHASE**

I hereby certify that the mobilehome that I (name of purchaser) am purchasing from (name of retailer-consumer) is being purchased for occupancy as a residence and that it will only be used for this purpose. I further certify and agree that if the property purchased under authority of this certificate is used for any other purpose, I shall be liable for payment of tax measured by the entire sales price or gross receipts from the sale to me less an amount equal to 75 percent of the sales price or gross receipts from the sale of the mobilehome to the retailer.

Date Certificate Given:  
Signed By: (name of purchaser)  
Capacity:  
Description of Property:

3. Determining the Date of Sale. Generally the tax applies upon the date of the sale of the property to the buyer. A sale takes place on the date of actual transfer of title to the property to the retailer-consumer's customer or at the time possession is transferred to the purchaser where title is retained by the retailer-consumer solely as security for the payment of the purchase price.

Transactions involving installations by dealers upon permanent foundation systems are subject to tax upon installation. For purpose of such a transaction, installation shall be considered to be complete upon the date of delivery of possession of the mobilehome to the buyer or upon the date of close of escrow for the sale, whichever event first occurs.

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4. **Equivalent Measure of Tax for Direct Sales By a Manufacturer.** A manufacturer is the "retailer-consumer" of any new mobilehome which he sells directly to a customer for occupancy as a residence and is required to declare and pay tax measured by an amount equal to 75 percent of the sales price or gross receipts from the sale at which a similar mobilehome ready for installation would be sold by the manufacturer to a retailer-consumer in this state.

5. **Purchase of a Mobilehome From a Retailer at an Out-of-State Location.** If the out-of-state retailer is engaged in business in this state within the meaning of Revenue and Taxation Code Section 6203, the out-of-state retailer is a retailer-consumer with respect to its qualifying sales of new mobilehomes and must report and pay tax as provided in subdivision (b)(3)(B)(1).

If the out-of-state retailer is not engaged in business in this state, then the purchaser must report and pay use tax measured by 75 percent of the out-of-state retailer's purchase price of any new mobilehome as set forth in subdivision (b)(3)(B)(1) of this regulation. In the absence of satisfactory evidence of the out-of-state vendor's purchase price, it shall be presumed that the measure of use tax for the transaction is an amount equivalent to 60 percent of the sales price of the mobilehome to the purchaser, provided the vendor is not the manufacturer of the mobilehome. If the out-of-state vendor is the manufacturer, tax will apply as provided in subdivision (b)(3)(B)(4) above.

#### (4) USED MOBILEHOMES.

**(A) In General.** Tax applies to the "gross receipts" from the sale of a used mobilehome and the "sales price" of a used mobilehome stored, used, or otherwise consumed in this State if, at the time of sale or use, the mobilehome is subject to annual license fees under the Health and Safety Code. Tax does not apply to the sale of a used mobilehome if, at the time of sale, the mobilehome is subject to property tax pursuant to Part 13 of Division 1 of the Revenue and Taxation Code (commencing with Section 5800); however, if, subsequent to the time of sale, the mobilehome is removed from the property tax rolls and reinstated under the annual license fee system, then tax applies in the same manner as if the mobilehome had been subject to the annual license fees at the time of sale.

Where a dealer, who is acting on its own account and not as a broker, sells a used mobilehome, the dealer is a retailer and tax applies to the retail sales price of the used mobilehome including separately stated charges for awnings, skirting, and other items of tangible personal property sold with the used mobilehome provided these items are not affixed to a mobilehome situated on a permanent foundation or directly affixed to realty. However, if a used mobilehome is sold in-place by a dealer, any separately stated values of existing real property improvements such as cement and landscaping or separately stated in-place location value are not subject to tax.

#### **(B) Special Application of Tax To Certain Transactions Involving Used Mobilehomes.**

1. **Application of Tax for the Period January 1, 1983 through December 31, 1984.** From January 1, 1983, to December 31, 1984, inclusive, "gross receipts" from the retail sale of, and "sales price" of a used mobilehome, sold or stored, used, or otherwise consumed in this state, means the retail value of the used mobilehome as determined in accordance with a current recognized value guide, whenever the registered or legal owner sells a used mobilehome through a person licensed under the Health and Safety Code as a dealer and not on the dealer's own account or through a licensed real estate broker acting pursuant to Section 10131.6 of the Business and Professions Code.

2. **Application of Tax for the Period January 1, 1985 through December 31, 1985.** From January 1, 1985 through December 31, 1985, inclusive, "gross receipts" from the retail sale of, and "sales price" of a used mobilehome, sold or stored, used, or otherwise consumed in this state, means the retail value of the used mobilehome as determined in accordance with a current recognized value guide, whenever the sale is:

- a. Through a person licensed under the Health and Safety Code as a dealer and not on the dealer's own account; or
- b. Through a licensed real estate broker acting pursuant to Section 10131.6 of the Business and Professions Code; or
- c. Whenever a purchaser of a used mobilehome is required to pay the use tax to the Department of Housing and Community Development.

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If the value guide does not specify the age, model, and manufacturer of a used mobilehome or if the actual sales price of a used mobilehome is less than the current value specified in the value guide, the "sales price" shall be based on the actual sales price of the mobilehome as evidenced by the purchase documents.

If the total contract price includes charges for accessories or other items which are not an integral part of the mobilehome, such as in-place location value, landscaping, or furnishings, and the actual sales price of the used mobilehome is not segregated in the purchase documents, the "actual sales price" of the used mobilehome for purposes of determining the "sales price" under the provisions of the preceding paragraph shall be either the total contract price or the value specified in the value guide, whichever is lower. However, if the value of the used mobilehome is not specified in the value guide, then the "actual sales price" of the mobilehome included within the total contract price shall be determined by the Board based on information available to it.

3. Application of Tax for Periods on and after January 1, 1986. Effective January 1, 1986, "gross receipts" from the retail sale of, and "sales price" of a used mobilehome, sold or stored, used, or otherwise consumed in this state, means the retail value of the used mobilehome as determined in accordance with a current recognized value guide, whenever the sale is:

a. Through a person licensed under the Health and Safety Code as a dealer and not on the dealer's own account; or

b. Through a licensed real estate broker acting pursuant to Section 10131.6 of the Business and Professions Code; or

c. Whenever a purchaser of a used mobilehome is required to pay the use tax to the Department of Housing and Community Development.

If the value guide does not specify the model or manufacturer of a used mobilehome, the value of the used mobilehome shall be established by reference to the highest value in the value guide according to age and size or the actual sales price, whichever is less. If the actual sales price of a used mobilehome is less than the current value specified in the value guide, the sales price shall be based on the actual sales price of the mobilehome as evidenced by the purchase documents. "Actual sales price" means the total contract price, including, but not limited to, the value of the mobilehome, in-place location, awning, skirting, carport, patio, landscaping, shrubs, unattached furnishings, or other items not part of the mobilehome, and documentation fees.

**(c) PAYMENT OF TAX BY PURCHASER.** Purchasers of mobilehomes and commercial coaches required to be registered annually under the Health and Safety Code, the sales of which are exempt from sales tax under subdivision (b)(1)(A) above, shall pay tax to the Department of Housing and Community Development, acting for and on behalf of the Board, at the time of making application for registration except:

(1) When the applicant establishes that the tax is inapplicable under the general exemption in subdivision (b)(1)(B) above; or

(2) When the applicant furnishes to the Department of Housing and Community Development a use tax exemption or tax clearance certificate issued by the Board.

A purchaser may pay the use tax and penalty, if any, to the Department of Housing and Community Development so as to secure immediate action upon the application for registration and thereafter apply to the Board for a refund of the amount so paid.

Whenever the purchaser of a commercial coach is required to pay use tax to the Department of Housing and Community Development, the sales price shall be presumed to be an amount equal to the market value of the property at the time of the purchase as that value is determined to measure the license fees imposed under Chapter 8 (commencing with Section 18075) of Part 2, Division 13, of the Health and Safety Code, multiplied by a factor of 1.8. The presumption may be rebutted by evidence which establishes that the sales price was other than such amount. This provision does not apply to commercial coaches required to be registered annually under the Health and Safety Code which are purchased outside this state from a manufacturer or dealer. The measure of tax of a purchase of a commercial coach from a bona-fide dealer outside this state is the sales price and the tax is payable to the Department of Housing and Community Development.

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Whenever the purchaser of a mobilehome is required to pay use tax to the Department of Housing and Community Development, the measure of tax shall be determined in accordance with subdivision (b)(3) or (b)(4) of this regulation, whichever is applicable.

If the purchaser of a mobilehome or commercial coach makes an application to the Department of Housing and Community Development which is not timely, and is subject to penalty because of delinquency in effecting registration or transfer of registration of the property, the purchaser then becomes liable also for penalty specified in Section 6591 of the Revenue and Taxation Code, but no interest shall accrue.

If the purchaser of a mobilehome or commercial coach does not make application to the Department of Housing and Community Development, or does not pay the amount of use tax due, or files a return with the Board under Section 6455 of the Revenue and Taxation Code which is not timely, interest and penalties shall apply with respect to the unpaid amount as provided in Chapter 5 (commencing with Section 6451) of Part 1, Division 2, of the Revenue and Taxation Code.

**(d) REAL PROPERTY IMPROVEMENTS ON OR TO MOBILEHOMES OR COMMERCIAL COACHES.** A person who both furnishes and affixes accessories or other items as improvements or additions to land, or to a mobilehome, or a commercial coach, which rests on a permanent foundation, is a construction contractor. The application of tax to construction contracts is explained in Regulation 1521, Construction Contractors.

*Authority:* Section 7051 revenue and Taxation Code

*Reference:* Sections 6006, 6010, 6012.2, 6012.9, 6275 - 6293, 6379 and 6422.1, Revenue and Taxation Code.

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BOARD OF EQUALIZATION

**SALES AND USE TAX REGULATIONS**

**Regulation 1668. SALES FOR RESALE**

*References:* Sections 6012.8, 6012.9, 6072, 6091–6095, 6241–6245, Revenue and Taxation Code.

Automobile Dealers, effect of accepting a resale certificate from nondealer retailer, see Regulation 1566.

Construction Contractors, use of a resale certificate by, see Regulation 1521.

Demonstration and Display, use of property purchased under resale certificates for, see Regulation 1669.

Drapery hardware installers accepting resale certificates, see Regulation 1521.

Newspapers and Periodicals, resale certificates for component parts of, see Regulation 1590.

Salt used by food processors, giving a resale certificate for, see Regulation 1525.

Vending machine operators furnishing resale certificates, see Regulation 1574.

**(a) RESALE CERTIFICATE.**

The burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the property is purchased for resale. If timely taken in proper form as set forth in subdivision (b) and in good faith from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit as required by Regulation 1699, "Permits," the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. A resale certificate remains in effect until revoked in writing.

**(b) FORM OF CERTIFICATE.**

(1) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the property described in the document if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name and address of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this State, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement that the property described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "exempt," or similar terminology is not acceptable. The property to be purchased under the certificate must be described either by an itemized list of the particular property to be purchased for resale, or by a general description of the kind of property to be purchased for resale.

(E) Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the ground that it is undated.)



(2) A document containing the essential elements described in paragraph (1) above is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation. If a purchaser operates an auto body repair and/or paint business, a specific resale certificate in substantially the same form as shown in Appendix B of this regulation should be used, rather than the general resale certificate shown in Appendix A.

(3) If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is taxable, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the property to the purchaser (whichever is the later), or that the tax or tax reimbursement was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(4) below.

(4) If a purchaser wishes to designate on each purchase order whether the property being purchased is for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether the property covered by the order is purchased for resale or whether tax applies to the order. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (a), it will be assumed that the property covered by that purchase order was purchased for use, and not for resale. If the purchase order includes both items to be resold and items to be used, the purchase order must specify which items are purchased for resale and which items are purchased for use. For example, a purchase order issued for produced parts for resale and also for tooling used to produce the parts should specify that the parts are purchased for resale and that the sale of the tooling is subject to tax.

(5) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the tax or tax reimbursement from the seller's billing, provides a seller's permit number to the seller, or informs the seller that the transaction is "not taxable" does not relieve the seller from liability for the tax nor from the burden of proving the sale was for resale.

**(c) GOOD FAITH.** In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in (b)(1) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business.

**(d) IMPROPER USE OF CERTIFICATE.** Except when a resale certificate is issued in accordance with subdivision (h) or (i):

(1) A purchaser, including any officer or employee of a corporation, is guilty of a misdemeanor if the purchaser, for the purpose of evading payment to the seller of tax or tax reimbursement, gives a resale certificate for property which the purchaser knows at the time of purchase will be used rather than resold. The purchaser will also be liable for penalty under section 6072 or 6094.5 for such improper use of a certificate.

(2) Any person, including any officer or employee of a corporation, who gives a resale certificate for property which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable to the state for the amount of tax that would be due if he or she had not given such resale certificate. If the person fails to report and pay the use tax due on the use of the property, the person may be liable for the penalty imposed under section 6484 or 6485.

**(e) OTHER EVIDENCE TO REBUT PRESUMPTION OF TAXABILITY.** A sale for resale is not subject to sales tax. A person who purchases property for resale and who subsequently uses the property owes tax on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in (b)(1), the seller will be relieved of liability for the tax only where the seller shows that the property:

(1) Was in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(2) Is being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, or

(3) Was consumed by the purchaser and tax was reported directly to the Board by the purchaser on the purchaser's sales and use tax return, or

(4) Was consumed by the purchaser and tax was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

**(f) USE OF XYZ LETTERS.** A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for tax under subdivision (e). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that tax was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the property purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(1) An XYZ letter may include the following information: seller's name and permit number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the property purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's permit number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(2) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the property in question was:

(A) Purchased for resale and resold in the form of tangible personal property, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;

(B) Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;

(C) Purchased solely for leasing and was so leased. Tax has been paid directly to the Board measured by the purchase price or rental receipts ("tangible personal property"); or tax has been paid measured by the purchase price or fair rental value ("mobile transportation equipment").

(D) Purchased for resale but consumed or used (whether or not subsequently resold); or

(E) Purchased for use.

(F) When the purchaser answers either (D) or (E) affirmatively (box checked), the XYZ letter will inquire further whether:

1. The tax was paid directly to the Board on the purchaser's Sales and Use Tax Return, and if so, in what amount;

2. The tax was added to the billing of the seller and remitted to the seller, and if so, in what amount;

4. The tax was paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

4. The purchaser confirms that the purchase is a taxable transaction and that tax is applicable.

(3) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in paragraphs (A), (B), (C), or (D) of subdivision (f)(2) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (g). However, the Board is not required to relieve a seller from liability for sales tax or use tax collection based on a response to an XYZ letter. The Board may, in its discretion, verify the information provided in the response to the XYZ letter, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use or whether tax was paid by the purchaser. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for sales tax or use tax collection.

(4) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of tax under subdivision (e) with respect to the questioned or unsupported transaction(s).

**(g) PURCHASER'S LIABILITY FOR TAX.** A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1) and that otherwise appears valid on its face, or who otherwise purchases tangible personal property that is accepted by the Board as purchased for resale pursuant to subdivision (f) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. The tax is due at the time the property is first stored or used and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property is first so stored or used. A purchaser cannot retroactively rescind or revoke a resale certificate and thereby cause the transaction to be subject to sales tax rather than use tax.

A purchaser who issues a resale certificate for property which the purchaser knows at the time of purchase is not to be resold in the regular course of business is liable for the sales tax on that purchase

measured by the gross receipts from the sale to that purchaser. The tax is due as of the time the property was sold to the purchaser and must be reported and paid by the purchaser with the purchaser's tax return for the period in which the property was sold to the purchaser.

**(h) MOBILEHOMES.** A mobilehome retailer who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, or for installation for occupancy as a residence pursuant to Section 18613 of the Health and Safety Code, and which mobilehome is thereafter subject to property taxation, may issue a resale certificate to the mobilehome vendor even though the retailer is classified as a consumer of the mobilehome by Sections 6012.8 and 6012.9 of the Revenue and Taxation Code. Also, effective September 19, 1985, a mobilehome retailer, licensed as a mobilehome dealer under Section 18002.6 of the Health and Safety Code, who purchases a new mobilehome for sale to a customer for installation for occupancy as a residence on a foundation system pursuant to Section 18551 of the Health and Safety Code, may issue a resale certificate to the mobilehome vendor even though the mobilehome retailer may have the mobilehome installed on a foundation system as an improvement to realty prior to the retailer's sale of the mobilehome to the customer for occupancy as a residence.

Where the mobilehome is acquired by a mobilehome retailer, who is not licensed as a dealer pursuant to Section 18002.6 of the Health and Safety Code, for affixation by the retailer to a permanent foundation, or for other use or consumption (except demonstration or display while holding for sale in the regular course of business), prior to sale, the mobilehome retailer may not issue a resale certificate. The mobilehome retailer shall notify the vendor that the purchase is for consumption and not for resale. When a mobilehome manufacturer or other vendor is informed or has knowledge that the purchaser will install the mobilehome on a permanent foundation prior to its resale, the manufacturer or other vendor is not making a sale for resale. Such vendor is making a taxable retail sale and cannot accept a resale certificate in good faith.

**(i) MOBILE TRANSPORTATION EQUIPMENT.** Any person, other than a person exempt from use tax, such as under Revenue and Taxation Code section 6352, who purchases mobile transportation equipment for the sole purpose of leasing that equipment, may issue a resale certificate for the limited purpose of reporting use tax based on fair rental value as provided in Regulation 1661.

*History:* Effective July 1, 1939.

Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended June 20, 1967, effective July 1, 1967.

Amended and renumbered November 3, 1969, effective December 5, 1969.

Amended April 6, 1977, effective July 1, 1977. Added new method of proof for resale, detailed what is adequate proof for resale, and clarified effect of purchase for use on a resale certificate.

Amended December 7, 1977, effective January 19, 1978. In (e) added the tax that would be due.

Amended July 28, 1982, effective June 26, 1983. Added new (e) and (f), renumbered (g) and (h), and added reference to Section 6072 to (g).

Amended April 9, 1985, effective June 27, 1985. In subdivision (g), amended to specify that the penalty provisions are also applicable to any officer or employee of a corporation who gives a resale certificate for property which he or she knows at the time of purchase will be used rather than resold. Added a reference to Section 6094.5 of the Revenue and Taxation Code with respect to the type of penalties a purchaser may be liable for if the purchaser makes an improper use of a resale certificate. Deleted subdivision (h) since it pertained to the effective date of amendments to the regulation which occurred in 1977.

Amended April 9, 1986, effective July 5, 1986. In subdivision (e), amended explanation under which mobilehome retailers may issue resale certificates to mobilehome vendors.

Amended March 28, 2001, effective July 6, 2001. Subdivision (b)(2) – The paragraph labeled “For Your Information” was added to the sample Resale Certificate currently in the regulation. A new paragraph was added providing a cross-reference to the resale certificate for the auto body repair and painting industry and the new certificate was added.

Amended December 20, 2001, effective May 17, 2002. Regulation re-titled “Sales for Resale.” Word “subsection” replaced with “subdivision” throughout. Subdivision (a): re-titled “Resale Certificate; subdivision (a)(2) deleted and its language transferred to new subdivision (g) and expanded; designation (a)(1) deleted and its language transferred to subdivision (a) and rewritten. Subdivision (b): subdivision (b)(1)(A) words “or an agent or” deleted and words “purchaser’s” and “authorized representative” added; subdivision (b)(1)(c) comma after word “purchaser” replaced by a period and word “or” deleted in first sentence; phrase “an ... number.” replaced with phrase “the ... number.” at the end of the subdivision. Subdivision (b)(1)(D) -- new third sentence added. Subdivision (b)(2) -- word “paragraph” added to first sentence and word “following” deleted from second sentence with new phrase “shown ... regulation” and new third sentence added and sample resale certificates moved to new Appendices A and B. Subdivision (b)(3) – phrase “within ... later)” added to second sentence. Subdivision (b)(4) word “that” replaced with “whether” in the first sentence; phrase “or ... (a)” added to third sentence. Subdivision (c) deleted and its language transferred to new subdivision (e) with new fourth sub-paragraph added. Subdivision (d) re-designated (c) accordingly. Phrase “In ... contrary,” transferred to beginning of first sentence and capitalized and letter “A” changed to lower case, and phrase “ if ...face” added. New subdivisions (d)-(g) added. Former subdivision (e) re-designated (h) accordingly. Former subdivision (f) re-designated (i), accordingly; language “person ... equipment” replaced with “person ... 1661.” Former subdivision (g) deleted.

*Note:* See Business Taxes General Bulletin 61-2 following Regulation 1525.

## APPENDIX A

### California Resale Certificate

**I HEREBY CERTIFY:**

1. I hold valid seller's permit number: \_\_\_\_\_.
2. I am engaged in the business of selling the following type of tangible personal property:  
\_\_\_\_\_.
3. This certificate is for the purchase from \_\_\_\_\_ of the item(s) I have listed in paragraph 5 below.  
[Vendor's name]
4. I will resell the item(s) listed in paragraph 5, which I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, I will owe use tax based on each item's purchase price or as otherwise provided by law.
5. Description of property to be purchased for resale:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
6. I have read and understand the following:

**For Your Information:** A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

## APPENDIX B

### California Resale Certificate for the Auto Body Repair and Painting Industry

**I HEREBY CERTIFY:**

1. I hold valid California seller's permit number: \_\_\_\_\_.
2. I am engaged in the business of selling the following type of property: \_\_\_\_\_.
3. This certificate is for the purchase from \_\_\_\_\_ of the item(s) I have *initialed* in paragraph 5 below.  
[Vendor's name]
4. I will resell the following item(s) I am purchasing under this resale certificate in the form of tangible personal property in the regular course of my business operations, and I will do so prior to making any use of the item(s) other than demonstration and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, **I will owe use tax** based on each item's purchase price or as otherwise provided by law.
5. I am purchasing for resale under this resale certificate the item(s) indicated by my *initials* below (**not** an X or similar mark):

_____ Automobile parts	_____ Fisheye eliminator	_____ Polishes/Wax	_____ Sealers
_____ Clear Coats	_____ Glues / Adhesives	_____ Primers	
_____ Electrical Tape	_____ Hardeners	_____ Putties	
_____ Fillers	_____ Paints	_____ Rust Protectors	
_____ Other (specify items) _____			

6. I have read and understand the following:

**Note:** Auto body repair and paint shops are generally considered consumers of the items listed below regardless of the manner in which they bill their customers for repairs and painting. Thus, this certificate generally may not be used to purchase these items. If a person does, in fact, resell any of the following items prior to use, the person may take a deduction on his or her sales and use tax return to offset the amount paid as tax (the deduction is taken under "Tax-paid purchases resold"). If, however, a person is purchasing one of these items exclusively for resale in the form of tangible personal property and not for consumption during repairs, painting, or the like, this certificate may be used to purchase such item by listing it under "Other" above.

Abrasives	Equipment repair parts	Masks	Reducers
Books	Goggles	Metal conditioners	Respirators
Cans	Hand cleaners	Paint remover	Rubbing compounds
Cleaning solvent	Manuals	Plastic bottles	Rubbing machines
Color charts	Masking paper	Polishing compounds	Thinners
Equipment	Masking tape	Polishing machines	Touch-up bottles

7. I have read and understand the following:

**For Your Information:** A person may be guilty of a misdemeanor under Revenue and Taxation Code section 6094.5 if the purchaser knows at the time of purchase that he or she will not resell the purchased item prior to any use (other than retention, demonstration, or display while holding it for resale) and he or she furnishes a resale certificate to avoid payment to the seller of an amount as tax. Additionally, a person misusing a resale certificate for personal gain or to evade the payment of tax is liable, for each purchase, for the tax that would have been due, plus a penalty of 10 percent of the tax or \$500, whichever is more.

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date